

## **CHAPTER VII**

### **PLAN IMPLEMENTATION**

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This chapter summarizes cost-sharing requirements and procedures necessary to implement the Recommended Plan.

#### **7.1 STUDY RECOMMENDATION**

The Recommended Plan would provide the maximum NER benefits relative to project costs while achieving the stated project objectives and while meeting the criteria established by the study team and Federal Principles and Guidelines. Because of its highly positive environmental contribution to restoration within the study area, the Recommended Plan is recommended for implementation.

#### **7.2 DIVISION OF PLAN RESPONSIBILITIES**

The Water Resources Development Act (WRDA) of 1986 (Public Law 99-662) and various administrative policies have established the basis for the division of Federal and non-Federal responsibilities in the construction, maintenance, and operation of Federal water resource projects accomplished under the direction of the Corps of Engineers. Anticipated Federal and non-Federal responsibilities are described in this section. The final division of specific responsibilities will be formalized in the project cooperation agreement (PCA).

##### **7.2.1 Federal Responsibilities**

The estimated Federal share of the total first cost of the project is 65 percent of first costs related to ecosystem restoration and 50 percent related to recreation. (First costs are all costs to implement the project less O&M costs). The Federal Government's responsibilities are anticipated to be:

1. Design and prepare detailed plans and specifications.
2. Identify the real estate requirements for implementation of the project.

3. Administer contracts for construction and supervision of the project after authorization, funding, and receipt of non-Federal assurances. .
4. Conduct all necessary cultural resource investigations and coordinate and implement any necessary preservation or mitigation measures
5. Conduct periodic inspections with the non-Federal sponsor to determine adherence to the post-construction maintenance requirements

### **7.2.2 Non-Federal Responsibilities**

Non-Federal or local responsibilities are anticipated to be:

1. Provide 35 percent of the total project costs allocated to ecosystem restoration and 50 percent of the total project costs allocated to recreation, as further specified below:
  - a. Enter into an agreement that provides, prior to execution of a project cooperation agreement for the project, 25 percent of design costs.
  - b. Provide, during construction, any additional funds needed to cover the non-Federal share of design costs.
  - c. Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations determined by the Government to be necessary for the construction, operation, and maintenance of the project.
  - d. Provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the project.

- e. Provide, during construction, any additional costs as necessary to make its total contribution equal to 35 percent of the total project costs allocated to ecosystem restoration and 50 percent of the total project costs allocated to recreation.
- 2. Assume responsibility for operating, maintaining, replacing, repairing, and rehabilitating (OMRR&R) the project or completed functional portions of the project, including mitigation features, without cost to the Government, in a manner compatible with the project's authorized purpose and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMRR&R manual and any subsequent amendments thereto
- 3. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the local sponsor owns or controls for access to the project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the project.
- 4. Comply with Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, 42 U.S.C 1962d-5b. and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, 33 U.S.C. 2213 which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element.
- 5. Hold and save the Government free from all damages arising for the construction, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.
- 6. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project to the extent and in such detail as will properly reflect total project costs.

7. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements, or rights-of-way necessary for the construction, operation, and maintenance of the project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government.
8. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA-regulated materials located in, on, or under lands, easements, or rights-of-way that the Government determines necessary for the construction, operation, or maintenance of the project.
9. Agree that, as between the Government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and, to the maximum extent practicable, operate, maintain, repair, replace, and rehabilitate the project and otherwise perform its obligations in a manner that will not cause liability to arise under CERCLA.
10. Prevent obstructions of, or encroachments on, the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) which might reduce the level of protection it affords, hinder its operation and maintenance, or interfere with its proper function, such as any new developments on project lands or addition of facilities which would degrade the benefits of the project.
11. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended 42 U.S.C 4601-4655, and the Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance of the project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

12. Comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).
13. Provide the non-Federal share of that portion of the costs of archeological data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with cost sharing provisions of the agreement.
14. Not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized.
15. Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms.
16. For so long as the project remains authorized, provide the quantity of water for such periods that the Government determines is necessary to construct, operate, repair, replace, rehabilitate, and otherwise maintain the project.
17. Provide the non-Federal cost share of that portion of the costs of archeological data recovery activities associated with historic preservation, that are in excess of one percent of the total amount authorized to be appropriated for the project, in accordance with the cost sharing provisions of the agreement.

### **7.3 COST APPORTIONMENT**

Cost sharing for construction of this project would be in accordance with applicable law whereby for environmental restoration projects, the non-Federal sponsor shall provide all lands, easements and rights-of-way, and dredged material disposal areas; provide relocations of bridges and roadways; provide alteration of utilities or facilities; and maintain and operate the project after construction. During the construction phase, the non-Federal sponsor shall contribute any additional funds as are necessary so that the non-Federal contribution would be at least 35 percent of total environmental restoration costs.

Table VII-1 provides a summary of project costs, apportioned between the Federal and non-Federal sponsors, for the recommended plan. The total project cost is currently estimated at \$164,950,295.00 at a current Federal discount rate of 5 1/8 percent. Based on the requirements of WRDA 1986, as amended cost sharing for ecosystem restoration features including provisions of all LERRDs would be 65 percent Federal and 35 percent non-Federal. Cost sharing for recreation features would be 50 percent Federal and 50 percent non-Federal.

USACE guidance (ER 1105-2-100, Appendix E) specifies that the level of financial participation by the Corps in recreation development may not increase the Federal cost of the project by more than 10 percent. Recreation cost for this project is currently estimated at \$11,173,000. The cost for all O&M would be the responsibility of the non-Federal sponsor. O&M of the ecosystem restoration is currently estimated at \$2,083,000 annually and \$800,000 annually for the recreation component. In addition, all water rights and costs associated with providing water to the project shall be borne by the non-Federal sponsor. The value of this water has been estimated at \$817,000 annually.

**Table VII-1: Cost Apportionment Recommended Plan**

<b>Item</b>	<b>Federal</b>	<b>Non-Federal</b>	<b>Total</b>
Construction of Ecosystem Restoration Features*	\$ 61,173,031	\$ 32,939,324.60	\$ 94,112,356.00
Monitoring and Adaptive Management	\$ 2,446,921.10	\$ 1,317,572.90	\$ 3,764,494.00
LERRDs**	-	\$ 55,900,000.00	\$ 55,900,000.00
<b>Total First Cost of Ecosystem Restoration</b>	<b>\$ 63,619,952.50</b>	<b>\$ 90,156,897.50</b>	<b>\$ 153,776,850.00</b>
Cost Share Adjustment***	\$ 36,355,000.00	\$ (36,335,000.00)	
<b>Total Cost-Shared Costs</b>	<b>\$ 99,954,952.50</b>	<b>\$ 53,821,897.50</b>	<b>\$ 153,776,850.00</b>
<i>Percentage of Total Cost-Shared Amount – Ecosystem Restoration</i>	<i>65%</i>	<i>35%</i>	
<b>Total Cost-Shared Costs for Recreation</b>	<b>\$ 5,586,722.50</b>	<b>\$ 5,586,722.50</b>	<b>\$ 11,173,445.00</b>
<i>Percentage of Total Cost-Shared Amount – Recreation</i>	<i>50%</i>	<i>50%</i>	
<b>TOTAL FIRST COSTS</b>	<b>\$ 105,541,675.00</b>	<b>\$ 59,408,620.00</b>	<b>\$ 164,950,295.00</b>
<p><i>*Construction, S&amp;A, PED/EDC and Contingency, does not include IDC or OMRR&amp;R</i></p> <p><i>** Lands, easements, rights of way, relocations, and disposal areas.</i></p> <p><i>*** Non-Federal cost shared amount exceeds the 35% requirement for ecosystem restoration projects. Adjustment to the first cost amounts result to the 65-35 percent cost sharing requirement.</i></p>			

## **7.4 CURRENT AND FUTURE WORK ELIGIBLE FOR CREDITS**

There is no current and future work planned or in construction which is part of the Corps' Selected Plans, or which would be eligible for Section 104 credit.

## **7.5 INSTITUTIONAL REQUIREMENTS**

The non-Federal sponsor will prepare the following preliminary financial analysis.

- 1 Assess project-related yearly cash flows (both expenditures and receipts where cost recovery is proposed), including provisions for major rehabilitation and operational contingencies and anticipated but uncertain repair costs resulting from damages from natural events.
- 2 Demonstrate ability to finance their current and projected-future share of the project cost and to carry out project implementation operation, maintenance, repair, and rehabilitation responsibilities.
- 3 Investigate the means for raising additional non-Federal financial resources including, but not limited to, special assessment districts.
- 4 Complete any other necessary steps to ensure that they are prepared to execute their project-related responsibilities at the time of project implementation.

## **7.6 ENVIRONMENTAL REQUIREMENTS**

### **7.6.1 National Environmental Policy Act (NEPA)**

NEPA ensures public involvement and notification of a proposed project. An initial public meeting was held on September 13, 2001, and a final public meeting was held on May 18, 2006. Multiple public workshops, information sessions, and meetings were also held as part of the scoping process. State and agency review of the Final EIS will be completed and a Record of Decision will be prepared.



### **7.6.2 Endangered Species Act**

Endangered Species Act, Section 7 informal consultation was completed with concurrence letter dated August 7, 2006 received from the USFWS. The Biological Assessment (see EIS) found that the project may affect but not adversely affect bald eagle, Southwest willow flycatcher, and Yuma clapper rail.

### **7.6.3 Fish and Wildlife Coordination Act**

The Fish and Wildlife Coordination Act Report provided by the USFWS supports the proposed restoration project and listed four recommendations to pursue in project implementation. These include the following:

1. Focus significant attention on securing a permanent and sufficient source of water, perhaps through a combination of effluent, groundwater, and storm water.
2. Maximize opportunities to restore a mosaic of heterogeneous vegetative cover types that maximizes structural habitat complexity.
3. Ensure that site-specific microhabitat conditions would be conducive to establishment and growth of native riparian plants, especially cottonwood, willow, and mesquite.
4. Encourage the non-Federal sponsor to evaluate Safe Harbor Agreements, Candidate Conservation Agreements, or Habitat Conservation Plans.

The first two recommendations have been implemented during formulation and evaluation of restoration alternatives. During project design site specific microhabitat conditions will be revisited and evaluated to ensure conditions are conducive to native riparian plants. The Corps will encourage and participate in evaluation of Safe Harbor Agreements, Candidate Conservation Agreements, or Habitat Conservation Plans as necessary during PED and Construction.

### **7.6.4 Clean Water Act, Section 404(b)(1)**

Pursuant to sect 404 of the Clean Water Act, 33 U.S.C. 1251 et seq, the Corps regulates the discharge of fill materials into waters of the United States. Where, as here, the discharge is

part of a Federal construction project that Congress authorizes the Corps to perform, the Corps does not issue itself a permit, but rather evaluates the impacts of the discharge utilizing the section 404(b)(1) guidelines and includes the evaluation in the environmental impact statement (EIS) for the project. The EIS for this project contains a 404(b)(1) analysis as Appendix A to the EIS. Although no section 404 permit is required for Corps construction activities, the non-Federal sponsor may be required to obtain a Section 404 permit for discharges of material associated with post construction operation and maintenance activities, unless granted a 404(r) exemption.

The recommended plan would result in discharge of fill material into waters of the United States during the period of construction. Pursuant to section 404 of the Clean Water Act, 33 U.S.C. 1251 et seq, the Corps regulates the discharge of fill materials into waters of the United States. Where, as here, the discharge is part of a Federal construction project that Congress authorizes the Corps to perform, the Corps does not issue itself a permit, but rather evaluates the impacts of the discharge utilizing the Section 404(b)(1) guidelines and includes the evaluation in the environmental impact statement (EIS) for the project.

The recommended plan may result in discharges associated with O&M activities. A Section 404(b)(1) evaluation has been prepared to address practicable alternatives, and can be found in the accompanying EIS. Based on this analysis, the feasibility report recommends that the project receive a 404(r) exemption for the construction period when Congress authorizes the project. Discharges into waters of the U.S. for future OMRR&R activities by the non-federal sponsor would require separate authorization pursuant to the Clean Water Act.

#### **7.6.5 National Historic Preservation Act**

Archeological investigations have been conducted as described in Sections 4.2.8.4 and 4.2.8.5 of this report. A letter was sent to the Arizona State Historic Preservation Officer (SHPO) on July 6, 2005 with our determinations in accordance with 36 CFR 800.4(d). We received a letter of response dated August 10, 2005. This letter concurred with the APE as described in Section 4.4.5 above. The SHPO requested a written report of the survey conducted by Corps personnel. A Memorandum of Record (MFR) was completed describing the survey conducted in March

2004. Correspondence may all be found within the attached EIS. The Rio Salado Oeste project is in compliance with Section 106 of the National Historic Preservation Act, Public Law 89-665, as amended, 16 U.S.C. 470a, and its implementing regulations found at 36 C.F.R. Part 800.

**Unanticipated Discovery:** Pursuant to Section 106 of the National Historic Preservation Act, Public Law 89-665, as amended, 16 U.S.C. 470a, and its implementing regulations found at 36 C.F.R 800.12(2), any discoveries of either human remains or archeological deposits during construction activities shall result in the following process:

- Corps of Engineers Archeology Staff shall be notified of discovery.
- Corps Archeology Staff shall determine if discovered cultural matter is an isolated find, or consists of a deposit of some extent. If needed, hand excavations shall be conducted to determine if the deposit is of sufficient content and integrity to be eligible for listing on the National Register of Historic Places.
- The Corps shall determine eligibility, and effect in consultation with the State Historic Preservation Officer pursuant to 36 CFR 800.

## **7.7 SPONSORSHIP AGREEMENTS**

Prior to the start of construction, the non-Federal sponsor would be required to enter into an agreement with the Federal Government that it would comply with Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended U.S.C. 1962d-5b, and the Water Resources Development Act of 1986 , Public Law 99-662, as amended 33 U.S. 2201 et seq.

## **7.8 PROCEDURES FOR IMPLEMENTATION**

Future actions necessary for authorization and construction of the Recommended Plan are summarized as follow:

1. The Draft and Final Feasibility Report/Environmental Impact Statement will be reviewed by the Headquarters of USACE, Washington, D.C, City of Phoenix, EPA, and the public.
2. The Chief of Engineers will seek formal review and comments by the Governor of the State of Arizona and interested Federal agencies.

3. Following State and Agency review, the report will be sent to the Assistant Secretary of the Army for Civil Works.
4. Upon approval of the Assistant Secretary, the report will be forwarded to the Office of Management and Budget to obtain the relationship of the project to programs of the President.
5. The final report of the Chief of Engineers will then be forwarded by the Assistant Secretary of the Army for Civil Works to Congress.
6. Congressional review of the feasibility report and possible authorization of the project would follow.
7. Pending project authorization for construction, the Chief of Engineers could include funds, where appropriate, in his budget requests for preconstruction engineering and design of the project. The objective is to ready each project for construction start established with the feasibility study.
8. Following receipt of funds, preconstruction engineering and design would be initiated and surveys and detailed engineering designs would be accomplished.
9. Following Congressional authorization of the project, plans and specifications would be accomplished by the District Engineer.
10. Subsequent to appropriation of construction funds by Congress, but prior to construction, formal assurances of local cooperation would be required from non-Federal interests.
11. Bids for construction would be initiated and contracts awarded.

## **CHAPTER VIII**

### **SUMMARY OF COORDINATION AND PUBLIC VIEWS**

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#### **8.1     NON-FEDERAL VIEWS AND PREFERENCES**

The non-Federal views and preferences regarding ecosystem restoration measures, and problems they addressed, in general were obtained through coordination with the local sponsor and with other various local and regional public agencies, community groups, resource conservation groups and the public. These coordination efforts consisted of public meetings held during the reconnaissance and feasibility phases, through the maintenance of points of contact that any interested party could discuss matters, and a distribution list where notices of public meetings was distributed. Announcement of public meetings was made in local media providing the date, time, place and subject matter.

#### **8.2     DIVISION OF PLAN RESPONSIBILITIES**

The City of Phoenix has expressed willingness in continuing to be a non-Federal sponsor for project implementation. They have indicated support for the project and willingness to assume cost-shared financial obligations for its implementation. A letter of support acknowledging sponsorship requirements for the project is presented as Figure VIII-1. There is currently a significant interest in providing ecosystem restoration solutions with recreation opportunities on the Rio Salado Oeste reach of the Salt River.



**City of Phoenix**  
OFFICE OF THE CITY MANAGER

April 21, 2006

Colonel Alex Dornstauder  
United States Army Corps of Engineers  
915 Wilshire Boulevard, Suite 14P00  
Los Angeles, California 90017

**Re: Letter of Support for the Rio Salado Oeste Recommended Plan, Salt River Ecosystem Restoration Feasibility Study**

Dear Colonel Dornstauder:

The City of Phoenix, as the local sponsor, supports the recommended plan contained in the Rio Salado Oeste Ecosystem Restoration Feasibility Report, for the Salt River between 19<sup>th</sup> Avenue and 83<sup>rd</sup> Avenue through Phoenix.

This restoration plan is consistent with the overall vision and goals the city has for restoration of the Salt River. We are prepared to move forward with the Army Corps to the next level of design and construction. This includes the sponsor's commitment to secure our financial share for preconstruction engineering and design costs once the project receives Congressional authorization.

We thank the Army Corps for their commitment and involvement in constructing the upstream Rio Salado environment restoration project. The successful grand opening of Rio Salado for our residents and all of its visitors on November 5, 2005 was a great beginning in making the riverbed an asset for our community and a natural resource. We look forward to working with the Army Corps to extend the improvements downstream by making Rio Salado Oeste a reality.

Sincerely,

Karen Williams  
Rio Salado Project Director  
City Manager's Office

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**Figure 0-1 City of Phoenix Support Letter**

### **8.3 SUMMARY OF STUDY MANAGEMENT, COORDINATION, PUBLIC VIEWS AND COMMENTS**

The study team was made up of a multi-disciplinary group that consisted of several functional elements of the Corps and the non-Federal sponsor. The study team included study and project managers, engineers, hydrologic and hydraulic engineers, groundwater specialists, environmental specialists, cost estimators, designers, appraisers, economists, materials, geotechnical specialists, real estate specialists, and landscape architects.

Formal and informal coordination occurred with a variety of Federal, State, and local agencies in addition to the public involvement described above. The Draft Environmental Impact Statement was distributed to local, State, and Federal Agencies and Tribal Governments for review and comment. Representatives from USFWS and AGFD participated in development of the functional assessment model and its application. The USFWS, AGFD, and FCDMC also participated in development of alternatives and their design. USFWS has provided a Coordination Act Report for this study, which can be found in the attached Final EIS. Further information pertaining to public meetings as well as public comments is also found in the EIS.

Letters from the US EPA, US Department of the Interior, Yavapai Prescott Indian Tribe, and Arizona Game and Fish Department were all supportive of the restoration project. Additional letters of support were received from Audubon Arizona, Phoenix Community Alliance, Valley Forward, Phoenix Planning Commission, Phoenix Parks and Recreation Board, members of the Phoenix City Council and former members of the Rio Salado Advisory Committee. All correspondence and comments on the report are found in the attached Environmental Impact Statement.

